

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 790 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and Sd/-

MR.JUSTICE R.P.DHOLAKIA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 - No

STATE OF GUJARAT

Versus

KOLI DHANA JEMA

Appearance:

PUBLIC PROSECUTOR for Petitioner

CORAM : MR.JUSTICE B.C.PATEL and
 MR.JUSTICE R.P.DHOLAKIA

Date of decision: 23/04/98

C.A.V. JUDGEMENT (Per: R.P.Dholakia,J.)

This appeal has been preferred by the State This appeal has been preferred by the State against the order of acquittal recorded by the learned Addl. Sessions Judge, Bhavnagar in Sessions Case No.86 of 1996. Accused were tried for the offences punishable under Secs. 364, 367, 302 and 34 of Indian Penal Code and Sec.135(1) of Bombay Police Act.

#. The prosecution case in brief is that on 5-4-1996 at about 12 noon, the original accused have kidnapped the minor son-Manish of the complainant, with an intention to snatch away his silver articles, which were worn by him, caused injuries, as a result of which, Manish succumbed to his injuries. When father of Manish could not find his minor son anywhere, he filed a complaint before the Taleja Police Station on 7-4-1996. In the evening at about 4.30, Madhubhai Becharbhai, Navinbhai Becharbhai and Popatbhai Jerambhai have informed that dead body of Manish is lying in the Sim of Tarsala Village. Thereafter, Police came to the spot and inquest panchnama and panchnama of scene of offence were got prepared. Investigation Officer, after completing the investigation, submitted the charge-sheet against three accused and charges were framed by learned Addl. Sessions Judge against the accused, who are respondents before this Court.

#. After hearing the learned advocates of respective parties, the learned Additional Sessions Judge has recorded the order of acquittal, against which, the State has preferred this appeal.

#. We called for the record and proceedings. After going through the record, learned Addl. Govt. Pleader has argued that trial Court ought to have believed the oral evidence of Popatbhai Jerambhai Balia (P.W.3), Babubhai Chhaganbhai Balia (P.W.7), Bhagvanbhai Bagabhai Balia (P.W.4) and Bachubhai Sardulbhai (P.W.8), who are witnesses of the incident.

#. We have gone through the record and it appears that, all the above witnesses are relatives of the complainant and it is established that they are not the witnesses of the incident. The complainant is also not a witness of the incident. According to P.W. No.3-Popatbhai Jerambhai Balia, while he was coming from Taleja to Gorkhi, he has seen the present respondents on Tarsala Road and he came to know about the death of Manish after two days. It appears that, he is a chance witness. According to P.W.4-Bhagvanbhai, he has seen Manish on 5-4-1996 in the early morning alongwith Ashok and Dhana, but nothing more has been deposed by him.

#. It is to be noted that there is not a single witness to the scene of incident and if prosecution relies only on the circumstantial evidence, then, chain of circumstances is required to be proved. In the

instant case, the prosecution was not able to complete and prove the chain of circumstances. It is also to be noted that the alleged date of death do not tally with the oral evidence of Dr.Upendrabhai Govindbhai.

#. This Court has carefully gone through the evidence which was suggested to be read by learned Additional Public Prosecutor. In an appeal against the order of acquittal, though there is no limitation upon the power of the High Court to review at large the evidence upon which, the acquittal was founded and to reach to a conclusion that the order of acquittal should be reversed, in exercising that power and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the view of the trial Judge as to the credibility of the witnesses; ((2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (3) the right of the accused to the benefit of any doubt, and, (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses (AIR 1934 PC 227).

#. We are not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:-

".... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudry (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

#. Looking to the above observations and the facts and circumstances of the case, the appeal stands rejected.

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